

1 IN THE UNITED STATES DISTRICT COURT

2 WESTERN DISTRICT OF TEXAS

3 EL PASO DIVISION

4 VOLUME 19 OF 20

5
6 UNITED STATES OF AMERICA

EP:13-CR-0370-DCG

7 v.

EL PASO, TEXAS

8 MARCO ANTONIO DELGADO

October 4, 2017

9 **RULE 35 HEARING**

10 THE HONORABLE DAVID C. GUADERRAMA

11 UNITED STATES DISTRICT JUDGE

12 APPEARANCES:

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24 Proceedings reported by mechanical stenography,
25 transcript produced by computer-aided software and computer.

KATHLEEN A. SUPNET, CSR

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1 (Open court.)

2 THE COURTROOM DEPUTY: EP:13-CR-370, Marco Antonio
3 Delgado.

4 MS. ARREOLA: Anna Arreola and Debra Kanof on behalf
5 of the United States, Your Honor.

6 THE COURT: Good morning.

7 MR. HANSHEW: Good morning, Your Honor. Erik Hanshaw
8 and Maureen Franco on behalf of Mr. Delgado.

9 THE COURT: All right. Good morning.

10 When we were sentencing Mr. Delgado, and I was going
11 through or articulating the scoring of the guidelines, I went
12 through them a couple of times and the math was not adding up
13 in my head. I was announcing 31 and 2, which doesn't change,
14 but as I'm in the showers a few days later, it strikes me that
15 the reason it wasn't adding up is because I wasn't adding the
16 two levels for the 1956 conviction.

17 So the proper scoring, I think is base 7. We add 20
18 for the amount of the loss, less than 25 million, but more than
19 9,500,000. Then we add 2 under three different theories; the
20 sophisticated means of the scheme, the 2B1.1(6)(10)(C), or if
21 that would not be appropriate, we would add two for
22 substantial -- the substantial part of the fraudulent scheme
23 committed outside the United States; that's 2b1.1(b)(10)(B).

24 And then Ms. Kanof's suggestion, which we looked at
25 and also found appropriate would be 2S1.1(b)(3). Under either

1 one of those, we would add two levels, but cannot add more than
2 two levels, but either one would be appropriate.

3 And then we would add two levels for the statute of
4 conviction 18 U.S.C. 1956 under 2S1.1(b)(2)(B). If we add all
5 of those up, that is 31, Criminal History Category II, so
6 Counts 1 through 10 are 121 through 151 months; Counts 11
7 through 19 have a statutory maximum of 120 months, so that
8 becomes the guideline.

9 So that's it. Does anybody want to add anything else?

10 MR. HANSHEW: Judge, can I speak with the prosecution
11 briefly?

12 THE COURT: Sure.

13 MS. KANOF: Did your calculation that you just gave us
14 include the Criminal Category II.

15 THE COURT: Yes, ma'am, 31 and 2.

16 MR. HANSHEW: I guess the question I had, Judge, and I
17 was just conferring with the prosecution, was to make sure that
18 the provision related to the 1956 statute wasn't being added on
19 top of as well as sophisticated --

20 THE COURT: Oh, no, no, no. It's -- it's going to go
21 up on appeal, and then the Appellate Court might say, well, you
22 know, this isn't quite sophisticated means, and -- but say,
23 well, it could be substantial part of it happened outside the
24 United States, and they could say, yeah, okay, so it applies
25 for that or they could say that doesn't apply either, and then

1 they go to the sophisticated money laundering scheme which --

2 MR. HANSHEW: Right. It is being offered as an all
3 alternative.

4 THE COURT: Right. Or --

5 MR. HANSHEW: Okay.

6 THE COURT: -- but only two, and no more than two or
7 not -- but it's under either of those three.

8 MR. HANSHEW: Okay. I understand, Judge.

9 THE COURT: That's it. And everything else remains
10 the same.

11 It's just that when I was articulating it, that the
12 numbers weren't adding up to 31, and I couldn't figure out why,
13 and it wasn't till later that it dawned on me it was the 1956.
14 Because I guess all of these are grouped and since they are
15 grouped, the we applied the highest to them all.

16 MR. HANSHEW: Okay, Judge. The only thing I would
17 add, and this is my paranoia of the Fifth Circuit, is that we
18 incorporate --

19 THE COURT: Right. And we -- right.

20 MR. HANSHEW: -- all objections that we've made
21 previously.

22 THE COURT: And when I looked at the record, you made
23 that clear at the end of the calculation, and so as far as I'm
24 concerned that would apply, and if you want to make them again,
25 I'm happy to have you do that.

1 MR. HANSHEW: I would incorporate all of the
2 objections we made at the sentencing hearing this last Friday
3 all by reference here reiterate those again, Judge.

4 THE COURT: Okay. And so if you need a ruling on
5 those then whatever the ruling was then is the ruling.

6 MR. HANSHEW: Okay. Thank you, Judge.

7 THE COURT: All right. Ms. Kanof or Ms. Arreola,
8 anything else that we need to do?

9 MS. ARREOLA: Nothing further on behalf of the United
10 States. Thank you, Judge.

11 THE COURT: All right. Thank you. Then we are
12 adjourned.

13 (Proceedings conclude.)

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I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter. I further certify that the transcript fees and format comply with those prescribed by the Court and the Judicial Conference of the United States.

Signature: /S/KATHLEEN A. SUPNET
Kathleen A. Supnet, CSR

September 7, 2018
Date

KATHLEEN A. SUPNET, CSR